cdfa
CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE
Karen Ross, Secretary

March 23, 2012

DMS NOTICE
QC - 12 - 4
DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Wal-Mart, Inc. – Stipulation to Modify Final Judgment, March 21, 2012

Enclosed is the "Stipulation to Modify Final Judgment" issued by the California Attorney General's Office, District Attorney's Office of San Diego County and the San Diego City Attorney filed on March 21, 2012, against Wal-Mart, Inc., for overcharging customers and failing to follow the requirements of their 2008 judgment with regards to the "Get it Free" program.

Wal-Mart, Inc. was assessed civil penalties, investigative cost recovery, and *cy pres* of $2.1 million. Civil penalties amounted to $1,754,465, *cy pres* restitution amounted to $100,000, and $245,535 was for agency costs. *Cy pres* of $100,000 will be given to the Division of Measurement Standards for its weights and measures package and price enforcement activities. Because of this judgment, the "Get it Free" program will be extended another year. The new signage for the "Get it Free" program is to be posted at each register by April 27, 2012.

San Diego County should report these penalties on the County Monthly Report (CMR). All participating counties should separately record their individual investigative cost reimbursements in the appropriate columns in the report.

We commend the prosecution team with representatives from the California Attorney General's Office, San Diego County and San Diego City Attorneys' Offices along with the State and county investigators that documented and caused to be prosecuted these violations. If you have any questions, please contact Kathy de Contreras, Supervising Special Investigator, Quantity/Weighmaster Programs, Enforcement Branch at (916) 229-3047, or via email at kcontreras@cdfa.ca.gov.

Sincerely,

Kristin J. Macey
Director

Enclosure

cc: Edmund Williams, Director, CDFA County/State Liaison

KAMALA D. HARRIS
Attorney General of the State of California
ALBERT NORMAN SHELDEN
Deputy Attorney General (retired annuitant), SBN 46277
110 West A Street, Suite 1100
San Diego, CA 92101
Telephone: (619) 645-2069
Facsimile: (619) 645-2062
E-mail: albert.shelden@doj.ca.gov

No Fee GC § 6103

FILED
Clerk of the Superior Court
MAR 21 2012
By: D. JELLISON, Deputy

BONNIE M. DUMANIS
San Diego District Attorney
GINA DARVAS
Deputy District Attorney, SBN 163221
330 West Broadway, Suite 750
San Diego, CA 92101
Telephone: (619) 531-4070
Facsimile: (619) 531-4481
E-mail: gina.darvas@sdcda.org

JAN I. GOLDSMITH
San Diego City Attorney
TRICIA PUMMILL
Assistant City Attorney, SBN 109858
1200 Third Avenue, Suite 700
San Diego, CA 92101-4103
Telephone: (619) 533-5500
Facsimile: (619) 533-5504
E-mail: tpummill@sandiego.gov

Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. WAL-MART, INC., a Delaware corporation, Defendant.	Case No. 37-2008-00096757-CU-BT-CTL STIPULATION TO MODIFY FINAL JUDGMENT

The People of the State of California, Plaintiff, by and through Kamala D. Harris, Attorney General of the State of California, by Albert Norman Shelden, Deputy Attorney General; Bonnie M. Dumanis, San Diego District Attorney, by Gina Darvas, Deputy District Attorney; and Jan I. Goldsmith, San Diego City Attorney, by Tricia Pummill, Assistant City

Attorney; and Defendant Wal-Mart Stores, Inc., a Delaware corporation, ("Wal-Mart" or "Defendant") by and through its attorneys, Greenberg Traurig LLP by Robert Herrington, stipulate that the proposed Modified Final Judgment Pursuant to Stipulation ("Modified Judgment"), a copy of which is attached as **Exhibit 1**, may be signed by the Court.

This Stipulation to Modify Final Judgment ("Stipulation") is executed between and among Plaintiff, the People of the State of California, and Defendant, Wal-Mart (collectively, "the Parties").

1. The Parties to this Stipulation are parties to a civil suit on which the Stipulated Final Judgment ("Original Judgment") was entered on November 24, 2008, in the Superior Court of the State of California for the County of San Diego, entitled *People of the State of California v. Wal-Mart Stores, Inc., a Delaware corporation*, case number 37-2008-00096757-CU-BT-CTL. The Original Judgment provides that either party may apply to the Court for modification of the injunctive terms of the Judgment.

2. The Parties stipulate that this Court has jurisdiction over them and each of them.

3. The Parties stipulate that this Court has jurisdiction over this matter.

4. This Stipulation is entered into as a settlement and without any admission of fault or liability by Wal-Mart. The parties stipulate that the Modified Judgment shall not constitute evidence of an admission by Wal-Mart of the existence or nonexistence of an issue, fact or violation of law or of liability or wrongdoing.

5. Wal-Mart has represented to the attorneys for the People of the State of California that it is the entity that operates Wal-Mart Discount Stores and Supercenters ("Wal-Mart Stores") in the State of California.

6. The parties believe that it is necessary to modify the terms of the injunction contained in the Original Judgment entered November 24, 2008, and have reached agreement as to the necessary modifications. These modifications are incorporated in the Modified Judgment attached as Exhibit 1.

7. Wal-Mart recognizes and states that this Stipulation to Modify Final Judgment and Modified Judgment are entered into voluntarily and that no promises or threats have been made

by the California Attorney General's Office, or the San Diego District Attorney's or the San Diego City Attorney's Offices, to induce Wal-Mart to enter into this Stipulation. There has been no inducement other than the provisions of the attached Modified Judgment.

8. The Parties waive their rights to move for a new trial or to otherwise seek to set aside the Modified Judgment through any collateral attack, and further waive their rights to appeal from the Modified Judgment, except that the parties, and each of them, agree that this Court shall retain jurisdiction for the purpose of enforcement and/or modification of this Stipulation and Modified Judgment.

9. The Parties enter into the attached Modified Judgment as a full and final settlement of all claims relating to price scanning discrepancies and violations of the injunctive terms of the Original Judgment filed on November 24, 2008, that were or could have been raised under applicable law up to the date of the filing of this Stipulation. Paragraphs 7-9 of the Modified Judgment refer to monetary amounts that are to be paid as part of the modification and replace the previous provisions for monetary payments contained in the Original Judgment filed in 2008.

10. The Parties have decided to settle their differences in accordance with this Stipulation. The parties stipulate and consent to the entry of the attached Modified Judgment without the taking of proof, trial or adjudication of any issue of fact or law alleged in the Complaint.

IT IS SO STIPULATED.

Dated: March 15, 2012

KAMALA D. HARRIS
Attorney General of the State of California

By: _____
Albert Norman Shelden
Deputy Attorney General (Retired Annuitant)

Dated: March 16, 2012

BONNIE M. DUMANIS
San Diego District Attorney

By: _____
Gina Darvas
Deputy District Attorney

Dated: March 15, 2012

JAN I. GOLDSMITH
San Diego City Attorney

By: Tricia Pummill
Tricia Pummill
Assistant City Attorney

Attorneys for the People of the State of California

Dated: 3/14/12

Robert Herrington
Greenberg Traurig, LLP

Attorneys for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. WAL-MART, INC., a Delaware corporation, Defendant.	Case No.: 37-2008-00096757-CU-BT-CTL **MODIFIED FINAL JUDGMENT PURSUANT TO STIPULATION**

The People of the State of California, Plaintiff, by and through KAMALA D. HARRIS, Attorney General of the State of California, by, ALBERT NORMAN SHELDEN, Deputy Attorney General; BONNIE M. DUMANIS, San Diego District Attorney, by GINA DARVAS, Deputy District Attorney; and JAN I. GOLDSMITH, San Diego City Attorney, by TRICIA PUMMILL, Assistant City Attorney; and Defendant WAL-MART STORES, INC., a Delaware corporation, ("Wal-Mart" or "Defendant") by and through its attorneys, GREENBERG TRAURIG, LLP, by ROBERT HERRINGTON, (collectively, "the Parties") having stipulated that this Court has jurisdiction over them and this matter and that this Modified Final Judgment Pursuant to Stipulation ("Modified Judgment") may be signed without the taking of proof, without trial or adjudication of any issue of fact or law herein, and without the Parties' stipulation constituting evidence of an admission by Defendant of any liability or wrongdoing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

JURISDICTION

1. This action is brought under California law and this Court has jurisdiction of its subject matter and the Parties.

2. Consistent with the Stipulation to Modify Final Judgment, this Modified Judgment resolves the investigation by the Plaintiff against the Defendant, relating to price scanning discrepancies and violations of the Stipulated Final Judgment originally entered by this Court on November 24, 2008 ("Original Judgment"), and is conclusive with respect to those matters set forth in this Modified Judgment regarding price scanning discrepancies which occurred in the State of California before the date of entry of this Modified Judgment.

INJUNCTION

3. The provisions of this injunction are applicable to Defendant, Wal-Mart doing business as Wal-Mart Discount Stores and Supercenters ("Wal-Mart Stores") in California, and to its officers, directors, employees, agents and representatives who have responsibility for the Wal-Mart Stores in California, when acting within the course and scope of their agency and employment, and to the successors and assignees of Wal-Mart, and to all natural persons, partnerships, corporations, and other entities acting for, under, by, through, on behalf of, or in concert with Wal-Mart, who have responsibility for the Wal-Mart Stores in California, with actual or constructive notice of this Judgment. All obligations imposed upon Defendant by the terms of this Modified Judgment are ordered pursuant to Business and Professions Code sections 17203 and 17535.

4. Wal-Mart and all persons and entities set forth in Paragraph 3 above are hereby permanently enjoined and restrained, pursuant to Business and Professions Code sections 17203 and 17535, from:

A. Making or causing to be made to the public any statement representing a price for an item offered for sale and charging a greater price at the time the item is purchased in violation of the California Business and Professions Code sections 17200 and 17500;

B. At the time of sale of a commodity, charging an amount which is greater than the price which is then advertised, posted, marked, displayed or quoted for that commodity, in violation of Business and Professions Code section 12024.2(a)(1); and

C. At the time of sale of a commodity, charging an amount greater than the lowest price posted on the commodity itself or on a shelf tag that corresponds to the commodity, notwithstanding any limitation of the time period for which the posted price is to be in effect, in violation of Business and Professions Code section 12024.2(a).

5. Wal-Mart, and all persons and entities set forth in Paragraph 3 above, are ordered for a period of four (4) years from the date of entry of the Original Judgment to initiate and enforce in all existing Wal-Mart Stores in California, and in every future Wal-Mart Store in California, before opening for business, a program to promote pricing accuracy. Such program shall consist of at least the following:

A. Wal-Mart shall designate a person or persons at its corporate headquarters who, with assistance as needed, will be responsible for receiving and maintaining price audit information, consumer complaints and weights and measures inspection reports from all Wal-Mart Stores in California. Wal-Mart has provided the names of the designated persons and their contact information to Plaintiff. Wal-Mart will provide the name and contact information of any individual who replaces or supplements the individuals currently designated within 30 calendar days of that assignment, by letter to the Consumer Protection Unit of the Office of the Attorney General, 110 West A Street, Suite 1100, San Diego, California 92101.

B. Wal-Mart shall designate an employee or employees in every Wal-Mart Store in California whose responsibilities shall include pricing accuracy. These efforts shall include, among others, department managers who shall scan features on a weekly basis, office associates or asset protection personnel who shall review approximately 250 price changes weekly and sales floor assistant managers who shall be responsible for implementation of the above program. Pricing errors discovered during such reviews shall be promptly corrected in the Wal-Mart Store. These employees shall also be

responsible for transmitting the information to the person or persons designated pursuant to Paragraph 5A above, at Wal-Mart's corporate headquarters within three hours after learning that a price in the point of sale computer system is different from the currently advertised price for the item in the store or in advertising, if the price discrepancy will or is likely to affect other Wal-Mart Stores in California. Wal-Mart shall ensure that there are backup employees trained to handle the responsibilities for price accuracy. The employees described in this paragraph shall, among them, work a minimum of 40 hours per week on price accuracy duties.

6. Wal-Mart, and all persons and entities set forth in Paragraph 3 above, are ordered for a period of five (5) years from the date of entry of the Original Judgment to initiate and enforce in all existing Wal-Mart Stores in California, and in every future Wal-Mart Store in California, before opening for business, a program to promote pricing accuracy. Such program shall consist of at least the following:

A. Whenever any employee of Wal-Mart becomes aware that a customer in a Wal-Mart Store in California has been or is being charged a price for an item which is higher than the lowest price currently listed on the shelf, store sign or advertisement, Wal-Mart shall give the customer a three dollar ($3.00) reduction from the item's lowest posted price or advertised price, or if the item's lowest posted price or advertised price is three dollars ($3.00) or less, the customer shall receive one such item for free. If a customer is purchasing more than one of the same identical item for which a price discrepancy is found, in addition to either deducting $3.00 from the price of one such item, or giving the customer one such item for free, Wal-Mart shall charge that customer the lowest advertised price on all remaining identical items purchased by that same customer in the same purchase transaction and the discrepant price shall be corrected. The cashier shall send a system notification to inform the Wal-Mart employee in charge of implementing price changes in the Wal-Mart Store in California of the price discrepancy promptly. This program shall be referred to as the "$3.00 Off Program." If the merchandise has been inadvertently moved to an incorrect shelf or display location, or

the price or signage for the item was fraudulently altered, the scanned price for the particular item shall apply.

B. Wal-Mart shall inform customers of the policy set forth in Paragraph 6A above, by posting a sign at every check-out stand in every Wal-Mart Store in California in a location where it is noticeable and easily readable by a customer who is standing in the check-out line. The signs shall state "If an item scans at a price higher than the shelf or advertised price, WE WILL CORRECT THE ERROR AND DEDUCT $3.00 FROM THE LOWEST ADVERTISED PRICE OF ONE SUCH ITEM. If the lowest advertised price is $3.000 or less, you will receive the item for free. You will be charged the lowest advertised price for all additional identical items you are buying at the same time." Such signs shall be printed in both English and Spanish. Each sign shall be the size and in the font of the document marked as Exhibit A to this Modified Final Judgment.

7. Nothing in this Injunction shall be a defense to an action by the People for a future violation of the Business and Professions Code.

MONETARY RELIEF

8. Pursuant to Business and Professions Code sections 17206 and 17536, Wal-Mart shall on the date of the filing of this Modified Judgment, pay to Plaintiff one million seven hundred fifty-four thousand four hundred sixty-five dollars ($1,754,465) in the form of three separate checks as follows: (1) a first check in the amount of four hundred thirty-four thousand eight hundred twenty-one dollars ($434,821) payable the "*California Attorney General's Office;*" (2) a second check in the amount of six hundred fifty-nine thousand eight hundred twenty-two dollars ($659,822) payable to the "*San Diego District Attorney's Office,;*" and (3) a third check in the amount of six hundred fifty-nine thousand eight hundred twenty-two dollars ($659,822) payable to the "*San Diego City Attorney's Office.*"

9. Wal-Mart shall on the date of the filing of this Modified Judgment, pay to Plaintiff costs totaling two hundred forty-five thousand five hundred thirty-five dollars ($245,535), in the form of thirteen (13) separate checks payable as follows:

California Attorney General $ 225,000

Calif. Dept. of Agriculture &Measurement Standards	$ 7,403
Alameda Weights and Measures	$ 308
Fresno Dept. of Agriculture	$ 512
Kings County Agriculture & Measurement Standards	$ 67
Los Angeles County Agricultural Commissioner/Weights & Measures	$ 1,406
Riverside County Weights & Measures	$ 5,296
San Bernardino County Agriculture/Weights & Measures	$ 1,965
San Diego County Agriculture, Weights & Measures	$ 354
San Joaquin County Weights & Measures	$ 552
Santa Clara County Weights & Measures	$ 2,192
Shasta County Agriculture/Weights & Measures	$ 278
Sonoma Weights and Measures	$ 202

10. Wal-Mart shall, pursuant to Business and Professions Code sections 17203 and 17535, pay *cy pres* restitution in the sum of one hundred thousand dollars ($100,000) in the form of one check payable to the "*California Dept. of Food & Agriculture, Division of Measurement Standards*" to be used exclusively for its weights and measures package and price enforcement activities.

11. All checks shall be delivered to the attention of Deputy District Attorney Gina Darvas, at the San Diego District Attorney's Office, 330 West Broadway, Suite 750, San Diego, California 92101.

12. In the event of default by Wal-Mart as to any amount due pursuant to Paragraphs 8, 9 and 10, the whole amount shall be deemed immediately due and payable to the County of San Diego, the City of San Diego, and the State of California, and Plaintiff shall be entitled to pursue any and all remedies provided by law for the enforcement of this Modified Judgment. Further, any amount in default shall bear interest at the prevailing legal rate from the date of default until paid.

RETENTION OF JURISDICTION

13. Jurisdiction is retained for the purpose of enabling any party to this Modified Judgment to apply to the Court at any time for such further orders and directions as may be necessary and appropriate for the construction or carrying out of this Modified Judgment, for the

$3 Pricing Credibility Policy

If an item scans at a price higher than the shelf or advertised price, **WE WILL CORRECT THE ERROR AND DEDUCT $3.00 FROM THE LOWEST ADVERTISED PRICE OF ONE SUCH ITEM.** If the lowest advertised price is $3.00 or less, you will receive the item for free. You will be charged the lowest advertised price for all additional identical items you are buying at the same time.

$3 Política de Credibilidad del Precio

Si un artículo escanea a un precio mas alto que el **precio del estante o del precio anunciado, NOSOTROS CORREGIREMOS EL ERROR Y DEDUCIREMOS $3.00 DEL PRECIO MÁS BAJO ANUNCIADO DE UNO DE LOS ARTÍCULOS LLEVADOS. Si el precio mas bajo annunciado es $3.00 o menos, usted recibira el articulo gratis. A usted se le cobrara el precio mas bajo anunciado por todos los articulos identicos adicionales que compre al mismo tiempo.**

Check Policy: We accept personal and payroll checks with proper ID.

Please show one of the following ID's:
- Driver's license
- Non-driver's state ID card
- Military ID
- Social Security Card and a picture ID

Sorry, we cannot accept:
- Third-party checks
- Checks made out to "cash"
- Post-dated checks
- Multiple-payee checks
- Handwritten payroll checks

You may write a check for up to $20 over the amount of your purchase upon ID verification. Transfer (EFT) or a draft drawn from your account, or to process the payment as a check transaction. When we use information from your check to make an EFT, funds may be withdrawn from your account as soon as the same day you make your payment, and your financial institution will not return your check.

If your check is returned unpaid, you also authorize us to collect your payment and a return fee of

$

by an EFT(s) of draft(s) drawn from your account.

©2012 Wal-Mart Stores, Inc.

Exhibit A